

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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 EUDILIO PALMA-CASTILLO, on his :
 own behalf and on the behalf of others :
 similarly situated, :

Plaintiffs, :

- against - :

NEW TACOLANDIA INC., doing :
 business as "Tacolandia," and :
 HUGO FERNANDEZ, an individual, :

Defendants. :

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 DOCUMENT
 ELECTRONICALLY FILED
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 DATE FILED: January 25, 2012

09 Civ. 10374 (PAC) (HBP)

ORDER ADOPTING R&R

HONORABLE PAUL A. CROTTY, United States District Judge:

Plaintiff Eudilio Palma-Castillo brought this action under the Fair Labor Standards Act and the New York Labor Law on December 22, 2009. Plaintiff alleges that Defendants failed to pay him the applicable minimum wage, overtime, and spread of hours compensation during the period that he was employed by Defendants. On March 28, 2011, Defendant Hugo Fernandez, proceeding pro se, moved to dismiss the Complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). Plaintiff filed his opposition to Fernandez's motion on April 12, 2011 and cross-moved for a default judgment against Defendant New Tacolandia Inc. On May 9, 2011, Magistrate Judge Pitman issued a Report and Recommendation ("R&R") recommending that Fernandez's motion to dismiss be denied and that Plaintiff's cross-motion for a default judgment be granted in part.

BACKGROUND¹

On December 22, 2009, Plaintiff filed his Complaint alleging that he was employed as a cook and general helper at Defendants' restaurant, Tacolandia, from

¹ Facts are taken from the R&R unless otherwise noted.

approximately 2001 to October 25, 2009. (Compl. ¶¶ 24-25, 27.) Plaintiff alleged that during that period, he worked approximately seventy-two hours or more per week, and that Defendants failed to pay him the applicable minimum wage, overtime, and spread of hours as required under the Fair Labor Standards Act and the New York Labor Law. (Compl. ¶¶ 28, 30, 33, 38.)

On June 1, 2010, Fernandez filed his Answer to the Complaint. (Docket No. 4.) On August 2, 2010, the matter was referred to Magistrate Judge Henry Pitman for all pretrial matters and dispositive motions. By order dated December 1, 2010, Magistrate Judge Pitman required that the parties make all initial disclosures pursuant to Fed. R. Civ. P. 26(a) no later than December 15, 2010, and that all fact discovery be completed no later than May 31, 2011. (Docket No. 7.) Magistrate Judge Pitman also indicated in his December 1, 2010 Order that if Defendant New Tacolandia did not obtain counsel by January 18, 2011, he would recommend that the Court enter a default judgment against it.

On March 28, 2011, Fernandez moved to dismiss the Complaint pursuant to Fed. R. Civ. P. 12(b)(6). Plaintiff filed a response on April 14, 2011, and cross-moved to strike Fernandez's answer or, in the alternative, to compel discovery. On May 6, 2011, Magistrate Judge Pitman ordered Fernandez to comply fully with the discovery requests by May 20, 2011.

On May 9, 2011, Magistrate Judge Pitman issued an R&R recommending that the Court deny Fernandez's motion to dismiss and grant, in part, plaintiff's cross motion for a default judgment against New Tacolandia Inc. Written objections to the R&R were due within 14 days pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure. No objections were filed and no requests for extensions of time to file objections were received.

CONCLUSION

For the foregoing reasons, the Court adopts Magistrate Judge Pitman's Report and Recommendation. Fernandez's motion to dismiss the Complaint is, therefore, DENIED. Plaintiff's cross-motion for a default judgment against New Tacolandia Inc. is GRANTED to the extent of noting its default and deeming its liability established. The Clerk of Court is directed to terminate document # 10 from ECF. The Order of Reference dated August 2, 2010 remains in effect.

Dated: New York, New York
January 25, 2012

SO ORDERED



PAUL A. CROTTY
United States District Judge

Copy Mailed By Chambers To:

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